

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

**IN RE REGIONS MORGAN KEEGAN
SECURITIES, DERIVATIVE & ERISA
LITIGATION,**

CASE NO. 2:09-md-2009

This Document Relates To:

**Andrew M. Stein, Stein Holdings, Inc.,
and Stein Investments, LLC,**

Plaintiffs,

v.

**Regions Morgan Keegan Select High
Income Fund, Inc., RMK High
Income Fund, Inc., RMK Strategic
Income Fund, Inc., RMK Advantage
Income Fund, Inc., RMK Multi-Sector
High Income Fund, Inc., Regions
Financial Corporation, RFC Financial
Holding, LLC, Regions Investment
Management, Inc.,**

Defendants.

Case No. 2:13-cv-02841

DEFENDANTS' MOTION FOR RECONSIDERATION

COME NOW Defendants Regions Financial Corporation, RFC Financial Services Holding, LLC, and Regions Investment Management, Inc. (collectively "Defendants"), by and through their undersigned counsel and pursuant to Rule 54(b) of the Federal Rules of Civil Procedure and Local Rule 7.3(b), and respectfully move this Court to reconsider its Order of September 29, 2014 denying Defendants' Motion to Dismiss.

Defendants respectfully submit that this Court must reconsider its Order because (1) there has been an intervening change of law with respect to *Police & Fire Ret. Sys. v. Indymac MBS, Inc.*, 721 F.3d 95 (2d Cir. 2013), in light of the fact that the United States Supreme Court has withdrawn its grant of *certiorari* and allowed the Second Circuit's decision to stand; (2) the Court failed to consider that *Wyser-Pratte Mgmt. Co. v. Telxon Corp.*, 413 F.3d 553 (6th Cir.

2005), is binding precedent in the Sixth Circuit, as confirmed in the Sixth Circuit's subsequent decision in *In re Vertrue Mktg. & Sales Practices Litig.*, 719 F.3d 474, 480 (6th Cir. 2013); (3) the Court's opinion fails to consider the rules of the arbitration forum and results in differential treatment of arbitration parties; and (4) the Court erred by applying Tennessee law instead of Alabama law with respect to the preclusive effects of Plaintiffs' prior state court action.

WHEREFORE, PREMISES CONSIDERED, for the reasons set forth herein, and more fully in the contemporaneously filed Memorandum of Law, Defendants respectfully request that this Court reconsider its Order and dismiss the claims of Plaintiffs in their entirety.

Respectfully submitted this 13th day of October, 2014.

s/ Peter S. Fruin

Peter S. Fruin

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on October 13, 2014 a true and correct copy of the foregoing document was forwarded by electronic means through the Court's ECF System upon the following:

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s/ Peter S. Fruin

OF COUNSEL